IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 25661 of 2006(E)

PETITIONER:

THE THRISSUR CORPORATION CONTRACTORS ASSOCIATION, A REGD.ASSOCIATION HAVING REG.NO.522 OF 1997,FUNCTIONING IN THE ADDRESS VIII/TC.1199, RAMAVARMAPURAM, THRISSUR-680 631,REP.BY ITS SECRETARY,P.MOHANAN, AGED 51, S/O.ACHUTHAN, POOLOTHUVALAPPIL HOUSE,P.O.CHITTISSERY,THRISSUR DT

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. THE STATE OF KERALA,
REP. BY THE SECRETARY TO THE GOVERNMENT,
LOCAL SELF ADMINISTRATION DEPARTMENT,SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE THRISSUR MUNICIPAL CORPORATION,
REP. BY THE SECRETARY, M.O. ROAD, THRISSUR.

R1 BY ADV. SRI.K.J. MOHAMMED ANZAR, SR. GOVT. PLEADER.
R2 BY ADV. SRI.K.B.MOHANDAS,SC,THRISSUR CORPORATION
SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 25661 OF 2006

Dated this the 12th day of September, 2007

JUDGMENT

In this Writ Petition under Article 226, the Trichur Corporation Contractors' Association which claims to be a representative body of various Civil contractors functioning under the Trichur Municipal Corporation in respect of various tenders awarded to them seeks appropriate writ commanding the respondents(State of Kerala and Trichur Municipal Corporation) to impose profession tax on the members of the Association only in accordance with the procedure and the rules laid down in Kerala Municipal (Profession Taxes) Rules, 2005, after declaring that imposition of profession tax can be only be in accordance with the aforementioned rules. There is a further prayer that the 2nd respondent be directed to sanction the bills of the members of the Association dehors the profession tax before the same is duly imposed in accordance with rules.

2. The 2nd respondent has filed a detailed counter affidavit producing Ext.R2(a) which is copy of a Government Order introducing Kerala Municipality (Profession Tax) Rules, 2005 as well as other documents. It is contended that referring to Rule 4 Sub Rule 4(10) of Ext.R2(a) that a mode has been prescribed for levying tax from various

types of assessees and that the members of the Petitioner Association are proposed to be assessed by the 2nd respondent only in accordance with the aforesaid provisions. It is contended that, demand notices were issued to the various members of the petitioner association and that it is even without responding to the notices that the petitioners have approached this court. It is pointed out that under the Rules(Sub Rule 5 of Rule 4 of the Rules) the aggrieved assesses have got remedy by way of revision to the Secretary himself.

3. Heard Sri.G.Sreekumar, counsel for the Petitioner Association and Sri.K.B.Mohandas, Standing Counsel for the Trichur Croporation. The counsel would make submissions on the basis of the pleadings of their respective parties and to draw my attention to the relevant provisions of the Kerala Municipality (Professional Tax) Rules, 2005. A careful reading of Rule 3 and Rule 4 of the Kerala Municipality (Professional Tax) Rules, 2005 will show that the liability of a contractor to pay profession tax to the Corporation can range between Rs.100/- to Rs.1,250/- depending upon the half yearly income of the contractor concerned. The rules will show that an assessment by Secretary of the Corporation is contemplated as to what is the half yearly income of the Contractor concerned and the consequential liability for professional tax. The materials placed on record by the Corporation are not sufficient to

conclude that any such assessment with notice to the members of the Petitioner Association and after affording an opportunity to them to show that their half yearly income is less than Rs.1,24,999/- has been made in this case. It would appear on a reading of Sub Rule 2 of Rule 4 that the Secretary of the Corporation is expected to direct the prospective assessees including the petitioners and other contractors to file returns in Form No.6 which obviously is intended to be used only in the case of salaried employees and not self-employed persons. At the same time, the position is irresistible that it is for the Secretary to make an assessment after directing the prospective assessees to submit their returns and after holding an enquiry. In the instant case, going by the records produced, the Secretary of the Corporation has not directed the members of the Petitioner Association to submit returns after holding enquiries.

Under these circumstances, I dispose of the Writ Petition itself issuing the following directions:

1. The Secretary of the Corporation is directed to invite returns from the members of the Petitioner Association, who can submit returns not necessarily in Form No.6 but containing the details which are absolutely necessary for enabling the Secretary to complete their assessment to the professional tax. In other words, the returns must

disclose the half yearly income of the concerned contractors. It is open to the members of the Petitioner Association to produce along with the return such documents including their statement of accounts as well as copies of the return submitted by them to the Income Tax Department for substantiating their case regarding their correct half yearly income. On receiving the returns the Secretary of the Corporation will complete the assessment after hearing the petitioners and thereafter only issue demands. It is declared that deduction of any amounts by way of profession tax by the Secretary of the Corporation, from the bills payable to the members of the Petitioners' Association without reference to the procedure indicated above, will be illegal.

PIUS C. KURIAKOSE, JUDGE

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